

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE DRH60256-LH-35C (12/29)

Short Title: Eyewitness ID Reform Act. (Public)

Sponsors: Representatives Glazier, Stam, Ross, and Lucas (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ENACT THE EYEWITNESS IDENTIFICATION REFORM ACT.  
3 The General Assembly of North Carolina enacts:  
4 **SECTION 1.** Chapter 15A of the General Statutes is amended by adding a  
5 new Article to read:

"Article 14A.

"Eyewitness Identification Reform Act.

8 **"§ 15A-284.50. Short title.**

9 This Article shall be called the "Eyewitness Identification Reform Act."

10 **"§ 15A-284.51. Purpose.**

11 The purpose of this Article is to help solve crime, convict the guilty, and exonerate  
12 the innocent in criminal proceedings by improving procedures for eyewitness  
13 identification of suspects.

14 **"§ 15A-284.52. Eyewitness identification reform.**

15 (a) Definitions. – The following definitions apply in this Article:

- 16 (1) Blind administration. – The procedure of conducting a photo lineup or  
17 live lineup by a line administrator who is not participating in the  
18 investigation of the criminal offense and who is unaware of which  
19 person in the lineup is the suspect and which persons are fillers.
- 20 (2) Eyewitness. – A person whose identification by sight of another person  
21 may be relevant in a criminal proceeding.
- 22 (3) Filler. – A person or a photograph of a person who is not suspected of  
23 an offense and is included in a lineup.
- 24 (4) Photo lineup. – A procedure in which an array of photographs is  
25 displayed to an eyewitness for the purpose of determining if the  
26 eyewitness is able to identify the perpetrator of a crime.

- 1           (5)   Live lineup. – A procedure in which a group of people is displayed to  
2           an eyewitness for the purpose of determining if the eyewitness is able  
3           to identify the perpetrator of a crime.
- 4           (6)   Lineup. – A photo lineup or live lineup.
- 5           (7)   Lineup administrator. – The person who conducts a lineup.
- 6       (b)   Eyewitness Identification Procedures. – Lineups conducted by State, county,  
7       and other local law enforcement officers shall meet all of the following requirements:
- 8           (1)   The lineup administrator shall be a person who does not know which  
9           person in the lineup is the suspect. In the event an independent  
10          administrator is not available, a double blind administration of the  
11          lineup shall otherwise occur, and an alternative method may be used as  
12          provided by subsection (c) of this section.
- 13          (2)   Individuals or photos shall be presented to witnesses sequentially,  
14          rather than simultaneously. Sequential presentation requires each  
15          individual or photo to be presented to the witness separately, in a  
16          previously determined order, removing each individual or photo after  
17          it is viewed, whereas simultaneous presentation requires all individuals  
18          or photos be presented at the same time.
- 19          (3)   Before a lineup, the eyewitness shall be instructed that the perpetrator  
20          might or might not be presented in the lineup, that the lineup  
21          administrator does not know the suspect's identity, that the eyewitness  
22          should not feel compelled to make an identification, that it is as  
23          important to exclude innocent persons as it is to identify the  
24          perpetrator, and that the investigation will continue whether or not an  
25          identification is made.
- 26          (4)   In a photo lineup, the photograph of the suspected perpetrator shall be  
27          contemporary and, to the extent practicable, shall resemble his or her  
28          appearance at the time of the offense.
- 29          (5)   The lineup shall be composed so that the fillers generally resemble the  
30          eyewitness's description of the suspected perpetrator, while ensuring  
31          that the suspect does not unduly stand out from the fillers. In addition:
- 32           a.   All fillers selected shall resemble, as much as practicable, the  
33           eyewitness's description of the perpetrator in significant  
34           features including any unique or unusual features.
- 35           b.   At least five fillers shall be included in a photo lineup, in  
36           addition to the suspected perpetrator.
- 37           c.   At least five fillers shall be included in a live lineup, in addition  
38           to the suspected perpetrator.
- 39           d.   If the eyewitness has previously viewed a photo lineup or live  
40           lineup in connection with the identification of another person  
41           suspected of involvement in the offense, the fillers in the lineup  
42           in which the suspected perpetrator participates shall be different  
43           from the fillers used in any prior lineups.

- 1           (6)   If there are multiple eyewitnesses, the suspect shall be placed in a  
2           different position in the lineup or photo array for each eyewitness.
- 3           (7)   In a lineup, no writings or information concerning any previous arrest,  
4           indictment, or conviction of the suspected perpetrator shall be visible  
5           or made known to the eyewitness.
- 6           (8)   In a live lineup, any identifying actions, such as speech, gestures, or  
7           other movements, shall be performed by all lineup participants.
- 8           (9)   In a live lineup, all lineup participants must be out of view of the  
9           eyewitness prior to the lineup.
- 10          (10) The suspected perpetrator shall be the only suspected perpetrator  
11          included in the lineup.
- 12          (11) Nothing shall be said to the eyewitness regarding the suspected  
13          perpetrator's position in the lineup or regarding anything that might  
14          influence the eyewitness's identification.
- 15          (12) The lineup administrator shall seek and document a clear statement  
16          from the eyewitness, at the time of the identification and in the  
17          eyewitness's own words, as to the eyewitness's confidence level that  
18          the person identified in a given lineup is the perpetrator. The lineup  
19          administrator shall separate all witnesses. Each witness shall be given  
20          instructions regarding the identification procedures without other  
21          witnesses present. Witnesses shall not be allowed to confer with one  
22          another either before, during, or after the procedure.
- 23          (13) If the eyewitness identifies a person as the perpetrator, the eyewitness  
24          shall not be provided any information concerning the person before the  
25          lineup administrator obtains the eyewitness's confidence statement  
26          about the selection. There shall not be anyone present during the live  
27          lineup or photographic identification procedures who knows the  
28          suspect's identity, except the eyewitness and counsel as required by  
29          law.
- 30          (14) Unless it is not practical, a video record of live identification  
31          procedures shall be made. If a video record is not practical, the reasons  
32          shall be documented, and an audio record shall be made. If neither a  
33          video nor audio record are practical, the reasons shall be documented,  
34          and the lineup administrator shall make a written record of the lineup.
- 35          (15) Whether video, audio, or in writing, the record shall include all of the  
36          following information:
- 37               a.   All identification and non-identification results obtained during  
38               the identification procedure, signed by the eyewitness,  
39               including the eyewitness's confidence statement. If the  
40               eyewitness refuses to sign, the lineup administrator shall note  
41               the refusal of the eyewitness to sign the results and shall also  
42               sign the notation.
- 43               b.   The names of all persons present at the lineup.
- 44               c.   The date, time, and location of the lineup.

- d. The words used by the eyewitness in any identification, including words that describe the eyewitness's certainty of identification.
- e. Whether it was a photo lineup or live lineup and how many photos or individuals were presented in the lineup.
- f. The sources of all photographs or persons used.
- g. In a photo lineup, the photographs themselves.
- h. In a live lineup, a photo or other visual recording of the lineup that includes all persons who participated in the lineup.

(c) Alternative Methods for Identification if Independent Administrator Is Not Available. – In the event an independent administrator is not available, a photo lineup eyewitness identification procedure may be conducted using an alternative method specified and approved by the Education Training Committee of the North Carolina Criminal Justice Education and Training Standards Commission. Any alternative method shall be carefully structured to achieve neutral blind administration and prevent the administrator from knowing which photograph is being presented to the eyewitness during the identification procedure. Alternative methods may include any of the following:

- (1) Automated computer programs that can automatically administer the photo lineup directly to an eyewitness and prevent the administrator from seeing which photo the witness is viewing until after the procedure is completed.
- (2) A procedure in which photographs are placed in folders, randomly numbered, and shuffled and then presented to an eyewitness such that the administrator cannot see or track which photograph is being presented to the witness until after the procedure is completed.
- (3) Any other procedures that achieve neutral blind administration.

(d) Standardized Witness Instructions Required. – Every law enforcement agency shall adopt standardized witness instructions to be read and signed by the witness at the time of the identification procedure consistent with the instructions adopted by the Education Training Committee of the North Carolina Criminal Justice Education and Training Standards Commission.

(e) Remedies for Noncompliance. – All of the following remedies shall be granted as relief for noncompliance with the requirements of this section:

- (1) Failure to comply with any of the requirements of this section shall be considered by the court in adjudicating motions to suppress eyewitness identification.
- (2) Failure to comply with any of the requirements of this section shall be admissible in support of claims of eyewitness misidentification, as long as such evidence is otherwise admissible.
- (3) When evidence of compliance or noncompliance with the requirements of this section has been presented at trial, the jury shall be instructed that it may consider credible evidence of compliance or

1                    noncompliance to determine the reliability of eyewitness  
2                    identifications.

3    **"§ 15A-284.53. Training of law enforcement officers.**

4                    The Department of Justice shall create educational materials and conduct training  
5                    programs to instruct law enforcement officers and recruits how to conduct lineups in  
6                    compliance with this Article."

7                    **SECTION 2.** This act becomes effective December 1, 2007, and applies to  
8                    offenses committed on or after that date.